

February 12, 2008, 1:00 PM

**Hearing Before Assembly Committee on Urban and Local Affairs**

**AB 553, Qualification-Based Selection**

Testimony of:

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I am speaking today in favor of AB 553, Qualification-Based Selection (QBS) of design professionals. My name is Fred Halfen, and I am the vice president of photogrammetry at Ayres Associates, a Wisconsin-based engineering firm. I am also the vice president of the Madison office of the firm. I am a Certified Photogrammetrist, which is a national certification based upon examination and accredited by the National Council of Examiners for Engineers and Surveying. This is the same organization that accredits engineering and surveying examinations across the country, including Wisconsin. I am also a licensed Surveyor and Mapper in Florida and a licensed Photogrammetric Surveyor in South Carolina.

My testimony today approaches this subject from the photogrammetric mapping/remote sensing perspective in the state of Wisconsin. Photogrammetry is the process of making precision maps through the use of survey control and aerial photography. Remote sensing is a similar technology using digital sensors such as LiDAR (light detection and ranging) to collect land data. Approximately 20 years ago, the legislature and the governor of Wisconsin passed into law the Wisconsin Land Information Program. This program uses a real estate transfer fee at the county level to fund land records modernization activity. A portion of the funding is retained at the county level and a portion is collected by the state and returned to the counties as grants that are administered by the Department of Administration (DOA). As I indicated, these dollars are ear-marked for land information modernization, and a substantial element of that modernization process is the precision mapping that's derived from photogrammetric/remote sensing engineering techniques. Over the last 20 years, many millions of dollars from this program have been contracted by every county in the state.

I have personally been involved in pursuing hundreds of these contracts in Wisconsin, and many of those experiences have not been good. Let me provide you with examples of how AB 553 will improve the current contracting situation and better serve the residents of our state.

As you might expect, the technology we use in mapping is complex. Often we see requests for bids that contain design specifications of one page or less. That's similar to telling a contractor to price construction of a building without a set of plans. Often the bids on these projects range by 400% to 600%. The government body may believe that they are serving the public interest by getting a great deal. *They may not, however, necessarily understand what they are buying.* They award the contracts on the only thing they understand – dollars. The value of the QBS process is that it encourages the government entity to become involved by better understanding what they're buying, and the process removes the price from the preliminary selection process. Through negotiation of the scope, the QBS process allows professionals to share their understanding with buyers, thereby helping them make more informed decisions.

Even when the government entity is knowledgeable of the technology, there is a problem that we see time and again when selection is price-driven. There are many international firms that operate in the photogrammetry and engineering marketplace. They succeed in the low bid game by using off shore labor in places such as China, India, Pakistan, and Poland. Often these projects are labor intensive. When that labor is paid a fraction of the minimum US wage – with no benefits – these firms are able to win contracts on price alone. Often the government entity doesn't even know where the work is performed. The reality of this situation is that these low bid firms are making obscene profits. I hope you also understand the ethical problem surrounding the support of firms that pay off shore workers such low wages. Finally, we should not ignore the potential security danger in having critical infrastructure data in the hands of people who may seek to do us harm.

Contrast this with the QBS process, where a completed estimate of cost is required from the selected firm. Man hour estimates, hourly wage rates, overhead rates, and profits are negotiated. And these items are all subject to audit before, during, and after the project.

QBS is not a new concept. Wisconsin is one of only four states that do not have a QBS law. There are some government bodies in our state that understand the value of QBS. At the state level, the Wisconsin DOT is a prime example. At the local government level, I have worked with regional planning commissions, counties, and municipalities that use QBS. They are typically more astute clients who better understand the technology and also understand that low price doesn't always get you the best value.

The mapping, surveying, and engineering projects we perform are investments in our infrastructure and future. A quality investment will stand the test of time. In reality, this boils down to common sense: I have to replace the roof on my house this year. If I hire a roofer whose price is half the cost of the next bidder, I'm smart enough to know I wouldn't be getting the same thing from each roofer. *Shouldn't we have a process in this state that assures tax payers their government understands just what it is that's being purchased with tax dollars?*

## QBS Bill-AB 553

### Hearing Before Assembly Committee on Urban and Local Affairs Testimony in Favor of QBS Bill

Only through a Qualification-Based Selection (QBS) process is vital communication encouraged between the Owner and the professional service provider (Engineer). Clear communication is essential to the collaborative process of transforming the Owner's idea into a developed concept by the Engineer devising a plan or design. Bidding of professional services is incompatible with the collaborative process. The inherent absence of communication during the bidding process to an Owner's Request for Proposal (RFP) precludes the Engineer from understanding the Owner's idea, their real needs. The Owner's RFP is a one-way communication. No matter how well prepared, it leaves open countless issues of *Why?*, *Would you consider this?*, *What ifs?*, *Are there other alternatives you would consider if it saves energy costs, or lasts longer, or is a "greener" approach?*, and so on.

The QBS process encourages creativity and thoroughness on the part of the Engineer. It enables the Engineer to more fully develop the Owner's idea and satisfy their real needs in the planning and design process. This results because the QBS process focuses on qualification and includes a negotiation step where the Owner and Engineer thoroughly define the Owner's idea to best achieve the project benefits the Owner seeks. Price is a component during negotiations, but after, both parties agree how concept development will be accomplished (the project scope). Furthermore, resulting construction contract bid documents, drawings and specifications, will be more clear. This will reduce uncertainty on the part of construction contract bidders thereby reducing bid costs and subsequent requests for clarification and changes during construction. The opportunity cost of not requiring a QBS process are undeterminable. Yet the cost is real! Your support for AB 553 is important to achieve wise use of

state funding resources for the benefit of all and particularly for the Owners of the finished project. Engineering services (professional services) should not be bid.

Example:

A few years ago my firm was hired through a QBS process to perform routine municipal/civil engineering services for a small city. As usual, the city issued a task order verbally in this specific example to design a new wastewater pumping station. As typically done, we provided a draft Scope and Schedule and proceeded to thoroughly review the city's needs with the appropriate city staff. This is the negotiation step in the QBS process. At this stage, we and the city realized this was not a simple wastewater pumping station project. Future developments and impacts on existing wastewater pumping stations in the area necessitated reconsideration of nearly every aspect of the city's idea.

If this project had been bid in response to a city-prepared written RFP, it would have been for a significantly different project than is the final project. Hopefully, the Owner and the Engineer would have realized the Owner's initial idea needed further concept development, a plan and design that best meets their real needs. If not, unfortunately the new pumping station would not function well now and not function well to serve the city's future needs. All of this at an undeterminable future cost, a lost opportunity cost.

Respectfully Submitted,

ACEC-Wisconsin

Philip E. Budde, P.E.  
President



AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Wisconsin

## The American Council of Engineering Companies of Wisconsin

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*the business voice of the Wisconsin consulting engineering industry*

### **Please Support AB 553 – Qualifications-Based Selection (QBS)**

This bi-partisan bill is being offered by Representative Mark Gottlieb in the Assembly and Senator Jeff Plale in the Senate. This bill mirrors federal requirements for the use of the QBS method of procuring professional architectural and engineering (A/E) services. QBS ensures safe, quality design work while saving taxpayers money, which is why it is currently required across the country.

#### **Why is this bill important?**

- The federal Government requires QBS in order to save money and ensure quality design on all projects using federal funding. This bill hopes to capture similar savings by having local government use QBS on certain projects.
- Wisconsin is 1 of only 4 states that does not have QBS legislation on the books.
- In Wisconsin, both the Department of Administration and the Department of Transportation use the QBS process in the selection of engineers and architects with exceptional results.
- Procurement of design services using QBS provides value and saves Wisconsin taxpayers money.
- Cheap design is expensive. Design costs typically represent 1% of the total life-cycle cost of the project. It makes sense to hire the best qualified designer in order to reduce construction costs and longer term operations and maintenance costs.

50<sup>th</sup> Anniversary



Building Wisconsin One Project at a Time

# Qualifications-Based Selection (QBS)

## Frequently Asked Questions

### **What is QBS?**

QBS is the acronym for Qualifications-Based Selection, a method of procuring professional architectural and engineering (A/E) services that makes relevant qualifications and experience the paramount basis for selection. It is an accepted, time-tested, fair, and equitable method of selecting design professionals that replaces bidding and results in the best overall value for the project.

#### **Q. Where did QBS come from?**

**A.** The US Congress has long recognized the merits of competitive selection based on qualifications by requiring A/E services [for federal projects] be selected on the basis of competence and unique abilities. It was in the best interest of the taxpayers. In 1972, the US Congress established **US Public Law - 92-582 referred to as the "Brooks Act"**, which states that *"The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices."*

Forty-six states and numerous local governments have followed the lead of the federal government requiring procurement of A/E services based on Qualifications-Based Selection.

#### **Q. How does Qualifications-Based Selection work?**

**A.** The QBS process can be summarized in four steps:

- (1) The owner determines it needs A/E services for a project and invites interested firms to submit their qualifications and experience.
- (2) The owner reviews and evaluates the submissions and either selects an A/E firm or a short list of A/E firms.
- (3) Personal interviews may be conducted with these A/E firms to discuss their philosophy and approach to the project.
- (4) The owner ranks the firms and invites the top firm to negotiate a formal agreement. During negotiation, the scope of the project is further defined. If an agreement cannot be reached, which is unusual, the owner negotiates with the next highest rated firm.

*The cost of A/E services is a factor in procurement, just not the only factor.*

### **Why use QBS?**

Selecting design professionals is a key component to a successful project. The design team's performance will influence the entire course of the project—financial, feasibility, public response, design, functional efficiency, construction costs, and maintenance costs during the

project's life. It is in the best interest of the public to retain professionals that are hired based on qualifications, not price.

Cheap design is expensive. Studies have shown for a typical public works project the costs, over the life of the facility, are 99% for operation, maintenance, and construction costs, and 1% for design costs. This demonstrates that if the "best-qualified" designer were able to reduce the long-term O&M and/or construction costs, it would be well worth any small increase in design fees.

## **What are the benefits of QBS?**

- It reduces overall costs. The owner's time and money is saved through an organized approach. Involving the design team early in the project improves overall planning and can identify costly errors.
- It produces a better quality project based on the owner's needs and goals. This process fosters innovative, creative, cost-saving, and timesaving approaches to problems. It makes sure that project expectations are clear and minimizes long-term maintenance and repair.
- It allows a fair and open competition based on a uniform set of criteria and information shared equally with interested or invited A/E firms.
- It provides a defensible step-by-step process that allows the owner to select the highest qualified A/E firm based on qualifications specific to the needs of the project.
- It safeguards public interest by allowing the owner to focus on qualifications to achieve the owner's requirements, which will lead to a successful and cost effective construction project rather than just the lowest design cost.
- It allows the owner to maintain control of the design process. The selection of the A/E firm is based upon qualifications. The price is negotiated to be fair to both parties, which encourages teamwork. It gives the owner and A/E firm the chance to define the project scope and to add or subtract options so that the owner's expectations can be met.

QBS is unlike the "bidding" process that requires the A/E firm to only provide the narrow definition of services required in the bid document. With bidding, there is no ability for the owner to be assured the most cost effective solution will be developed. Bidding discourages the design professional from looking at alternatives and "thinking out of the box." Instead the quickest and easiest design answer will be used to minimize design time. The consequence is a design based only on basic standards without concern for construction cost and, more importantly, maintenance and life cycle costs, resulting in the owner not knowing the difference until it's too late.

## **Is the competition fair?**

### **Q. Is QBS consistent with competitive procedures?**

**A.** Yes, the concept that public procurement should be on a competitive basis is fully met by QBS and negotiation procedures. It is highly competitive among the firms seeking the assignment. Congress' 1984 Competition in Contracting Act explicitly includes procurement of A/E services under the Brooks Act.

### **Q. Does this process inhibit competition?**

**A.** Not at all. It simply focuses competition for professional services on the most meaningful factors for the specific project: qualifications, competence, previous performance, and availability.

**Q. Does QBS eliminate price competition?**

**A.** Not at all. Price is always a factor. The difference is price comes into play later in the selection process, after the highest technically ranked A/E firm is selected and the scope of work is fully defined.

**Q. Does bidding for A/E services create more competition?**

**A.** No, the opposite is true. Many of the more qualified firms are not willing to "bid" on projects. Quality-oriented firms are far more interested in QBS opportunities, in part because they can present their best ideas to save the owner money and find approaches to improve the projects.

**Q. Does QBS give small firms a fair chance?**

**A.** Yes, QBS encourages competition based on a firm's ability to perform a job. A small firm has the same opportunity to match its design team's experience against a larger firm for the project. The skills, experiences, and specialization of a firm and individuals are considered, not merely the number of employees.

**Q. What happens if the owner and A/E firm cannot agree on the fee?**

**A.** The owner is not obligated to contract with the top ranked firm if the two parties cannot agree on the tasks and money. The owner is never required to pay more than it can afford or has budgeted. The owner can simply move to the next firm on the list.

QBS means the owner can negotiate a fair and reasonable price for services. Price is negotiated after the selection of the most competent, qualified professionals. Most importantly, it means our buildings, bridges, roadways, and wastewater treatment facilities will be designed in the most competent and cost effective manner, not only for today, but also for the future.

## **Who uses QBS?**

QBS has long been recognized as the process that best serves the public interest throughout the nation and in many parts of the world.

- The State of Wisconsin procures A/E services through the QBS process (Wis Adm 20.)
- Transportation projects with federal funding require QBS selection of design firms.
- Wisconsin municipalities and counties voluntarily use QBS, recognizing the influence on the entire project cost and outcome.
- The American Public Works Association, a professional association of public agencies, endorses QBS.
- QBS is included in the American Bar Association's model procurement code for state and local governments.
- Private owners use QBS, realizing it generates quality construction documents and realistic contractor bids.

These varied decision makers know QBS projects put the proper emphasis on public health, safety, and quality of life. Taxpayers benefit because QBS fosters the development of innovative, cost-effective design solutions at a fair market value. This consistently results in



lower overall project costs; the minimization of delays, cost overruns and litigation; and reduced operating and ownership costs over the life of the project.

## **Why legislate QBS?**

- To clarify a confusing situation.  
It is a common misconception for Wisconsin public owners to believe A/E services must be bid. Professional services related to public works projects should not be confused with construction contractor's work, which typically must be publicly bid. In fact, the League of Wisconsin Municipalities includes information on its website clarifying A/E services do not have to be bid.
- To provide value and save Wisconsin taxpayers money.  
The Department of Administration understands the value of QBS. Wisconsin Admin Chapter 20 specifies A/E services shall be selected using a Qualifications-Based Selection. Forty-six states have passed legislation calling for the use of QBS to hire design professionals, and the American Bar Association endorses QBS in its *Model Code for State and Local Government*.

## **Where can I go to find out more information?**

Visit the following websites for helpful resources and reference material.

- QBS Wisconsin website, [www.qbswi.org](http://www.qbswi.org)
- American Council of Engineering Companies of Wisconsin (ACEC WI) [www.acecwi.org](http://www.acecwi.org), 608/257-9223
- American Institute of Architects of Wisconsin (AIA Wisconsin) [www.aiaw.org](http://www.aiaw.org), 608/257-8477
- League of Wisconsin Municipalities <http://www.lwm-info.org/legal/faq/faq5.html> - 4



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February 12, 2008

Representative Mark Gottlieb  
Assembly Urban and Local Affairs Committee  
Wisconsin State Legislature  
Madison, WI

RE: AB553 – Qualifications Based Selection for Procurement of Professional Services

Dear Representative Gottlieb and Members of the Urban and Local Affairs Committee:

Thank you for holding this hearing on AB553. The American Council of Engineering Companies of Wisconsin (ACEC WI) supports this legislation. We believe it offers the best value for procurement of professional services. Receiving bipartisan support, this is a best practices bill, ensuring that the most qualified firm is selected and precious state funds are not wasted.

ACEC WI represents consulting engineering firms. Our member firms employ over 4,000 design professionals in 120 offices across the state. ACEC WI members play a critical role for Wisconsin, from designing infrastructure that assures the safety of its citizens and fuels economic development to developing ways to clean up and protect the environment.

Our members work with local communities, the state, and other governmental units to identify critical needs and solve problems. The design solutions are creative, cost effective, and provide clear direction for the bidding and construction of the final project.

Owners may have an idea of what is needed for a project, but it is almost never clearly defined. That's why they engage the services of a design professional – to help develop the project's scope. By selecting the most qualified firm, the owner is ensured of receiving the best value and the highest level of satisfaction over the life of the project.

AB553 spells out the process for selecting the most qualified firm through a Qualifications-Based Selection (QBS) process. Using this procurement process, an owner initially selects a design professional based on the owner's full satisfaction with the design professional's qualifications. The price is secondary. Using QBS does not mean there's a blank check given to the design professional. Price will always be a factor and, for state projects, providing value to the taxpayers of Wisconsin is paramount.

The difference in this procurement method is that price comes into play after the highest technically ranked firm is selected and the scope of work is fully defined. The owner is

The difference in this procurement method is that price comes into play after the highest technically ranked firm is selected and the scope of work is fully defined. The owner is not obligated to contract with the top ranked firm if the two parties cannot agree on the tasks and money. The owner is never obligated to pay more than it can afford or has budgeted. The owner can simply move to the next highest ranked firm and begin negotiations.

QBS ensures safe, quality design work while saving taxpayers money, which is why state and local governments mandate it across the country. In fact, Wisconsin is one of only four states that do not have QBS legislation on the books.


This is best value procurement legislation that is time-tested, fair, and equitable. In 1972 Congress required QBS in order to save money and ensure quality design on all projects using federal funding. According to a U S Senate report that accompanied the federal legislation, the law's purpose was to codify practices of the previous 30 years of federal, state, and local governments to "retain the present practice of selecting the best qualified design professional, subject to the negotiations of compensation that is fair and reasonable to government." This bill's intent is to capture similar savings by having local governments use QBS. Here in Wisconsin, both the Department of Administration and the Department of Transportation use the QBS process in the selection of engineers and architects.

Cheap design is expensive. Design costs typically represent 10 – 15% of construction costs and, factoring design into the total life-cycle cost of projects, they represent 2% of the project. Yet the design professional incurs a significant responsibility in shaping the owner's concept into a workable project and a biddable set of drawings and specifications. It makes sense to hire the best-qualified design professional in order to reduce construction costs and longer term operations and maintenance costs. The small increases in design fees are more than offset by the long-term savings.

For more than 20 years, ACEC WI has pooled resources with the American Institute of Architects, Wisconsin chapter, to provide public owners with tools and facilitation services to guide these units of government through the QBS process for selecting an engineer, architect, or land surveyor. There has never been a charge for this assistance. The QBS Wisconsin website receives more than 3,000 new visitors annually. Attached to this testimony is one of the tools we have made available; it provides answers to frequently asked questions.

Using QBS to procure design services provides value and saves the Wisconsin taxpayer money. ACEC WI asks you to vote in favor of AB553. Thank you.

Sincerely,



Carol Godiksen  
Executive Director

The notion that the work of a consultant should be defined as a project is extremely misleading and the heart of the problem I have just described. A better approach would be to simply define the work of consultants as a contract for professional services in clear language that avoids any reference to a project, building or construction, making this work not subject to the low-bid construction statutes.

WTBA strongly objects to the definition of a project on p.6, (h). Under 1, is the \$250,000 minimum the cost of a completed project, or just the professional service contract? If the former, many local projects requiring engineering services would be inappropriately excluded. Is the value of choosing the most appropriate consultant any less valuable on a project costing \$225,000 than one costing \$275,000? If it is the latter, then the large majority of professional service contracts would be excluded.

We especially object to #3, under the definition of a project. It mixes professional services and contracting as if they were all part of the same universe. In effect, we believe that a local unit of government could issue a design-build contract under this language, with a consultant as prime contractor. That would indeed be a radical change in Wisconsin law, and has no place in this bill. It would all be one "project". We see the same problem with Section 9 on p. 9.

In section 10, the problem we see is that a local government could hire a consultant to purchase materials for a subsequent construction project. The problem that would result is that if there is a materials quality issue, the contractor will be penalized for using bad materials, but has no recourse to sue the material producer, with whom he has no contractual relationship. This would be bad public policy.

In summary, we strongly support Chairman Gottlieb's efforts to advance a Qualifications-Based Selection Process for professional services contracts, only.

We would be pleased to work with Chairman Gottlieb and all committee members on a substitute amendment that would address these concerns.



# MARK GOTTLIEB

Speaker Pro Tempore  
Wisconsin State Assembly

**Testimony of Representative Mark Gottlieb**  
**Assembly Bill 553**  
**Assembly Committee on Urban and Local Affairs**  
**February 12, 2008**

Members of the Committee:

Thank you for the opportunity to testify before you today on Assembly Bill 553, relating to limiting the use of the lowest responsible bidder process and requiring local units of government to use the qualification-based selection process for certain public works consulting contracts.

Qualifications-Based Selection (QBS) is a process for selecting design professionals through a negotiated process that is based on their competence, experience and qualifications. So there is a clear understanding upfront, I want to emphasize that this bill only addresses the issue of the design phase of a public works project and has nothing to do with local government units bidding out services for the construction phase.

With the implementation of the Brooks Act in 1972, Federal law requires the use of QBS to select architects or engineers in the design for federally-funded projects. Its proven success at the federal level has led forty-six states and a variety of municipalities throughout the country to follow suit in adopting laws and ordinances requiring QBS on state and local projects. QBS is also used by the Wisconsin Departments of Transportation and Administration to select architects and engineers for state highway and building projects. However, there is currently no requirement that local governments use QBS, even on state-funded projects (unless federal funds are involved).

It is a misconception that the lowest price is always the best choice when selecting professionals to plan and design public projects. Design costs typically represent only about one percent of the total lifecycle cost of a public works project. To underestimate the importance of finding the best-qualified designer to reduce the lifecycle costs of a public works project, and automatically select the lowest price, is not in the best interest of the taxpayers.

With this in mind, I introduced Assembly Bill 553 requiring local governments to use QBS to select engineers, architects, land surveyors, landscape architects or professional geologists for public works projects that are over \$250,000 and for which the state provides financial assistance. While the primary emphasis in the selection process is on the designer's qualifications and not lowest price, this bill does not prohibit other bidding

**STATE REPRESENTATIVE • 60<sup>TH</sup> DISTRICT**

processes if negotiations between the local government unit and all consultants submitting proposals for the project fail to produce an agreed upon contract.

Assembly Bill 553 also stipulates that if a local government unit hires a consultant for local bridge inspections, QBS must be utilized and it negates the thresholds established in the bill for total project cost and state financial assistance. When damage or threatened damage to the public work creates an emergency, QBS is not required for selecting consultants in the repair or reconstruction of that public work.

I'd like to address some of the more common questions that arise when discussing QBS –

*1) How do you know you're getting the best deal if you can't consider price when ranking the consultants?*

QBS is an efficient and effective process because it requires the government agency and consulting firms to first examine the entire scope of the project, not just the immediate concerns of design cost. Believing low-cost bidding will provide a government body the best deal and a comprehensive review about the scope of the project is counterintuitive because a poorly defined scope of required services can lead to numerous costly change orders, and it can largely limit the ability to search for innovative and alternative approaches.

*2) The state has people who deal with QBS everyday. How can smaller, local governments negotiate a good deal if our board/council doesn't have the experience or the proper information before us?*

The lack of experience and breadth of knowledge is precisely the reason why local governments should utilize QBS. In the case of towns and smaller villages, major public works projects, like water treatment facilities, that require consultants come few and far between. QBS affords them the unique ability to appropriately address the issue of cost after they first fully understand the entire scope of the project and any innovative alternatives that may be presented to them.

QBS affords a local government unit and all consulting firms involved in the process the opportunity to openly and freely discuss the scope and parameters of a project. Unlike the low-price method, it can dramatically minimize costly change orders. And if the highest-ranked firm and the local government unit cannot negotiate a price, the government unit can move on to the next firm without penalty.

*3) Won't some firms be shut out of the process due to their size or lack of experience?*

I believe QBS is the most competitive and open procurement process available. Rather than simply requiring the lowest price a firm can offer, this process emphasizes the firm's ability to perform the job. It gives smaller firms the same opportunity as larger and/or well-known firms to demonstrate its design team's qualifications and experiences; whereas under the price-bidding method, small firms may be forced to selectively target

which projects they think they can win due to scarce resources while large firms can spread their costs among a greater number of projects.

*4) Shouldn't local communities be left to decide what is the best method to utilize?*

If they are bidding for local projects with local money – absolutely. However, Assembly Bill 553 brings some accountability into the process because it requires the use of QBS if a local government unit has to hire a consulting firm in the design of a public works project that utilizes state financial assistance greater than \$250,000. At a time when the state is facing some serious long-term financial instability, we have a vested interest in knowing state taxpayer dollars are being used in the most efficient and effective manner and QBS is the best proven method to provide the accountability we need.

According to the American Council of Engineering Companies and the American Institute of Architects, the following groups support or utilize QBS (it does not necessarily indicate they endorse this legislation):

- American Bar Association
- American Council of Engineering Companies
- American Council of Engineering Companies - Wisconsin
- American Institute of Architects
- American Institute of Architects – Wisconsin
- American Public Works Association
- Associated General Contractors
- Federal Highway Administration
- National Society of Professional Engineers
- U.S. Army Corps of Engineers
- Wisconsin Department of Natural Resources
- Wisconsin Department of Transportation
- Wisconsin Division of State Facilities, DOA
- Wisconsin Towns Association

Thank you and I'd be happy to answer any questions at this time.



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To: Assembly Committee on Urban and Local Affairs  
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities  
Date: February 12, 2008  
Re: **AB 553, Requiring Municipalities to Use Qualification-Based Selection Process in Certain Contracts**

The League of Wisconsin Municipalities opposes AB 553. The bill requires municipalities to use a qualification-based selection (QBS) process when selecting engineering or architectural consultants for public construction projects that exceed \$250,000 in cost and are funded in part by the state. The bill requires a municipality to create a procedure to solicit proposals from consultants for projects, but the proposals may not contain any information on proposed fees or costs.

While municipalities support and often use QBS, we oppose mandating the process even under the limited circumstances specified in the bill. We have the following specific concerns:

- ◆ The bill explicitly prohibits asking about price. Many communities currently use a QBS plus cost process for selecting engineering and other professional consultants. We are opposed to eliminating price considerations entirely from the selection process.
- ◆ Some of our members are concerned that the bill places municipalities in a relatively weak position to negotiate a contract once a firm is selected. Unlike DOT, municipalities are not regularly involved in projects that necessitate the selection of consulting engineers. The selected engineering firm need not be worried about developing a long term relationship and winning future contracts as it negotiates with the municipality.
- ◆ The process seems to favor and benefit established and larger firms and would for the most part foreclose the ability of start-ups or fledgling consulting firms with limited performance histories to compete for municipal work.
- ◆ Small and medium sized communities with less staff and resources will find it difficult and expensive to comply with the QBS process spelled out in the bill draft.

The bottom line is that municipalities should have flexibility to choose professional consultants in the manner that best meets their needs.

For the above reasons we urge you to not recommend passage of AB 553. Thanks for considering our comments.

*STRONG COMMUNITIES MAKE WISCONSIN WORK*





DATE: February 12, 2008  
TO: The Assembly Committee on Urban and Local Affairs  
FROM: William J. Mielke, P.E., R.L.S. *WJM*  
RE: AB 553

My name is William J. Mielke and I am here on behalf of the American Council of Engineering Companies of Wisconsin in support of QBS Bill-AB 553. I am a Professional Engineer and Registered Land Surveyor and President and CEO of Ruekert & Mielke, Inc. a 140 person consulting engineering firm located in Waukesha. I am very familiar with the various methods government agencies have utilized to select consultants as the past 37 years of my engineering career has been spent serving City, Village, Town and County government. In addition, I served on and was chairman of the national Committee on Federal Procurement of Architectural and Engineering Services. This committee represented the nation's architects, engineers and land surveyors relative to procurement of professional services by all of the Federal agencies through a process called Qualifications Based Selection (QBS).

The bill being proposed embodies the nationally recognized process to properly select a consultant in a competitive setting that will work to ensure you get the best value for our public taxpayer expenditures. The most important decision for the success of a public project is the selection of the architectural or engineering firm. This action will determine the quality and cost of a project, the life cycle cost of a project and the satisfaction of the project users. Well-intended, but ill-informed public opinion is that professional services can be obtained by the bidding process, which will result in taxpayer savings. Nothing could be further from the reality of what actually happens when a consultant's selection is based on which firm has the lowest fee.

There are many examples of poor quality designs, cost overruns, litigation, unfulfilled owner expectations which were caused by public owners bidding professional services and the reasons usually fall into one or more of the following recurring themes:

- Public owners seek professional consultants to help them with scoping, designing and overseeing the construction of a project because they do not have the expertise to undertake the project themselves. Because of this, most requests for proposals are lacking in the full definition of what is needed or expected from the design professionals, it is impossible to have a level playing field to compare bids.



- Without a complete and comprehensive outline of what is being requested from the design professional, the firm who offers the least amount of effort will be the low bidder and be awarded the project.
- Firms with more experience who would have been able to fully evaluate more cost effective approaches, new technology or other life cycle cost benefit alternatives know they wouldn't have the lowest price and either don't submit a proposal or they submit a proposal using their most inexperienced design staff using standard design practices and conservative standard designs all of which will add costs to the final construction cost of the project.
- Firms selected based on price understand there is no real benefit for any extra effort to save the owner money or to offer cost saving alternatives since their firm will only be considered for future projects if they again are the lowest bidder. Communities lose the ability to build a relationship with a consultant who acts as a trusted advisor and uses his or her talents to do great work such that they will be recommended for future work.
- Low bid design firms cannot provide more detailed and specific plans and specifications as that would take extra time and effort and they wouldn't get the job. Yet construction contractors have continually stated that that plans lacking detail will result in higher bids due to protective contingencies that must be included to cover the unknowns. It's either that or the contractor will submit costly "extra" claims.
- Public works projects need to last much longer than a commercial venture where first cost is important and you have what we call "throw away buildings". Consideration needs to be given to the long-term operation, repair and maintenance, which will be a continuing taxpayer cost. Therefore quality is important and the design should not be minimized.

If cost control and the best use of our taxpayers' dollars is what you are trying to achieve, this bill will go a long way toward accomplishing that goal. Professional fees usually represent less than 2% of a project's overall life cycle cost, which includes the design, construction, operation, and maintenance costs. By using QBS and selecting the most qualified and competent consultant in many cases even that cost is offset by project savings through the expertise and creativity of the selected consultant.

QBS is a competitive selection process and in fact, I would argue that it improves our industry to the overall benefit of the public. Since the QBS selection process includes an evaluation of a consultant's past performance, to be successful you need to work hard to please your client, develop relationships, look for cost saving measures and represent the best interests of the community you are working for. The QBS process makes firms work toward providing higher quality service. It requires that the firms put their best teams on the project and that the firm fully understands the client's needs and has the best plan to meet them. Bidding services



requires none of the above, and in fact takes the decision-making, and the ability to select the most qualified firm out of the hands of the elected officials.

The American Public Works Association, which represents the public agencies in the U.S., has continuously supported QBS. They have published many guidelines on the merits and use of QBS with the latest being, "APWA Red Book on Qualifications-Based Selection, Guidelines for Public Agencies", dated August 2006. They state, "Competitive bidding for engineering and architectural services is not in the best public interest, because it may easily lead to employment of a lesser qualified or least qualified firm (rather than the best qualified as should be the objective).

The Federal Government in 1972 passed the Brooks Act, which required the selection of architects and engineers on the basis of their qualifications. Since that time, nearly every State has passed similar legislation. It's time for Wisconsin to take action to better protect our taxpayer dollars and pass this proposed legislation.

We appreciate the opportunity to comment on this very important piece of legislation and would be happy to answer any questions you may have or provide any additional information you may require.



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ENGINEERING

February 12, 2008

Committee on Urban and Local Affairs

Subject: 2007 Assembly Bill 553

Gentlemen:

I support 2007 Assembly Bill 553. I believe government organizations should use the Qualification Based Selection (QBS) process to the greatest extent possible. Especially for the selection of consultants for projects with a total estimated cost in excess of \$250,000. My experience clearly shows that to do so results in a better defined project, an overall lower consultant fee and total project cost, and usually a shorter timeline for performance of the required services and construction of the project. With that said it should be noted and understood that to utilize the QBS process does carry with it an up front increased level of effort, and a greater and more in-depth experience, training, and knowledge on the part of the organization staff.

For an organization to be able to adequately employ the QBS process I believe they would need the following minimum resources.

- An understanding by the organization of what Qualification Based Selection is and what it is not.
- Staff or access to staff resources that are qualified to perform the following
  - Recognize and adequately define the needs of the organization in order to develop an initial project definition and basic estimate
  - Develop list of required consultant qualifications tailored to the organization and project upon which to evaluate and select a consultant.
  - Develop and implement a review and evaluation process that is unbiased
  - In concert with the first choice consultant develop a more detailed scope of required services upon which a fee proposal and subsequent fee negotiations are based
  - Conduct project fee negotiations and recognized when a fair a reasonable fee has or has not been reached
  - Manage the negotiated contract to completion

In my opinion utilization of QBS brings to the organization numerous benefits that outweigh the initial or upfront increase in level of effort on the part of the organization staff. The more significant benefits are:

- Establishes, up front, a professional relationship between the government organization and the consultant
- Utilization of a consultant that is qualified to perform the required services within the timeline needed by the organization.

- A clearly defined scope of required services of the finished project itself and level of effort needed to provide those services to accomplish the project.
- Elimination of "fee creep", i.e., the increasing of a fee based upon award of a consultant contract to the lowest bid based upon a less than accurate project description resulting in the need to increase a fee because a level of effort was not included in the original bid.
- Establishes a clear base line of expenses / costs upon which to base any required changes.
- Typically the consultant services are completed in a more timely fashion.
- Greatly improved finished product.
- Generally a lower overall fee for the desired / required services.

After review of the proposed legislation I would like to propose the following comments:

- There should be minimum state financial involvement before the QBS process requirement is triggered. For example 10% of overall projected project costs.
- Before any type of negotiation between the organization and consultant can begin for developing a fee a clearly defined / detailed project scope of services needs to be jointly developed.
- Will there be any guidance provided to the organizations on how to evaluate the consultants' response to the organizations' request for a statement of qualifications and how they meet the developed selection criteria? For example, I rank the selection criteria based upon what is most important to Mequon on a project specific basis. From this ranking I assign a weight or multiplier to the specific criteria. This is usually the reverse of each criteria's respective rank. For example if I have 9 selection criteria the 1<sup>st</sup> criteria has a value or multiplier of 9 and the 9<sup>th</sup> criteria has a value of multiplier of 1. I then evaluate each criteria on a scale of 1 to 5 on how well the criteria are met. We have developed a definition / guidance for what a consultant must provide to achieve a score of 5, 4, 3, ect., ect.. Then using the criteria multiplier and criteria specific evaluation score I get a composite score for each criteria. Adding up all the composite scores for each criteria gives an applicants total score on how well they met the stated selection criteria. The highest scoring consultant is ranked first. For larger jobs the top 3 to 5 firms are called in for interviews. Then based upon interview scores we select a consultant. The attached are provided as examples
- Will there be any form of QBS training for the municipalities. Preferably free
- If an organization does not have the necessary resources to select a consultant using the QBS process, is the state prepared to provide the necessary service and/or resources to the organization.
- Will there be any form of QBS process training for the government organizations. Preferably free
- Allowing the organization to utilize a QBS process selected consultant for follow on projects is a nice advantage. However I would caveat this benefit by requiring the following
  - The follow on project must be of similar discipline requirements or the consultant must clearly show they have an established capability to perform the required services.

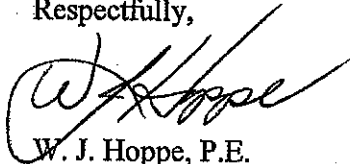
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2007 Assembly Bill 553

- The ability to go to the selected consultant for a follow on project with out having to go through the QBS process should be limited either in the number of follow on projects or for a specific duration after the initial contract is signed. For example either 3 follow on projects or for a period on 18 months after the initial contract is signed.

In my opinion the following disadvantages apply to the QBS process

- The timeline for selection of a consultant is a bit longer and more intensive.
- Most smaller government organizations are unfamiliar with the QBS process and are comfortable with the low bid type of selection. It has been my experience in Wisconsin that change is difficult.
- To use the QBS process requires staff resources, experience, and knowledge that most smaller government organizations may not have or have access to.

Respectfully,



W. J. Hoppe, P.E.  
City Engineer

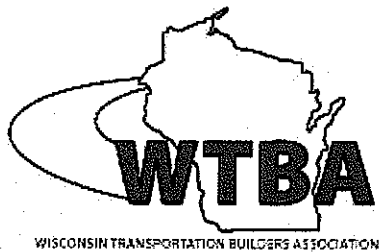
Statement of Qualifications Review				
Project: Reconstruction of Pioneer Road from Green Bay Road east to Klug Lane				
Firm: Crispell-Snyder, Inc				
Qualifications				
Number		Multiplier	Score	Total
1	Professional qualifications of the firm and staff proposed for performance of services  Review Comments:	9		
2	Specialized recent experience and technical competence of proposed staff in the area of required service and knowledge of Wisconsin Department of Transportation project requirements and procedure.  Review Comments:	8		
3	Design quality control practices/techniques with attention to interdisciplinary coordination and control  Review Comments:	7		
4	Ability to perform a quality control program during construction  Review Comments:	6		
5	Past performance in terms of cost control, quality of work, compliance with performance schedule and accuracy of construction estimate  Review Comments:	5		
G:\Shr_data\Eng\Eng 2005\Hoppe\Pioneer Rd-GreenBay-Klug-qualifications rating 020705				

## STATEMENT OF QUALIFICATION SCORING SCALE

SCORE	DESCRIPTION
5	Addressed the question in detail displaying a complete understanding and showing an existing application, complete with guidelines, procedures, and examples
4	Addressed the question in a competent fashion depicting a clear understanding of the subject, its intent, and application leading one to believe that performance was being accomplished or procedures could easily be modified to incorporate.
3	Addressed the question displaying an understanding of the subject and its intent and willingness to incorporate procedures into their routine for the project.
2	Addressed the question in a fashion the leading one to believe that they are or will perform the requirement.
1	Failed to adequately address the subject of the question.



Statement of Qualifications Review				
Project : Reconstruction of Pioneer Road from Green Bay Road east to Klug Lane				
Firm: Crispell-Snyder, Inc.				
Number	Qualifications	Multiplier	Score	Total
6	Location of the firm and knowledge of the general area and locality of the project.	4		
	Review Comments:			
7	Capacity to accomplish the work in the required time frame.	3		
	Review Comments:			
8	Ability to perform construction inspection and support services.	2		
	Review Comments:			
9	Ability to accomplish design by CAD and computer modeling.	1		
	Review Comments:			



## **WTBA Testimony**

**Assembly Committee on Urban and Local Affairs**

**Public Hearing on AB- 553**

**Tom Walker, Director of Government Affairs  
February 12, 2008**

Good afternoon, Chairman Gottlieb and members of the Committee. Thank you for the opportunity to testify on AB-553 today.

WTBA is a statewide organization of more than 260 contractors, consultants, and associated businesses. Our members design, build, rehabilitate, improve, reconstruct, expand and modernize every form of transportation infrastructure, including state and local roads and bridges, airports, railroads, and bicycle and pedestrian infrastructure.

I want to emphasize that WTBA is testifying today in support of both our contractor and consultant members. We strongly agree on how this bill should best be drafted.

I am testifying in strong support of the required use of a qualifications-based selection process by local governments for choosing engineering consultants and other professional services.

Local governments and contractors depend on well crafted plans. A quality plan will result in the best product at the lowest cost. With quality plans, projects will proceed expeditiously with few change orders required. The better the plan, the sharper the contractor's pencil becomes, as the risk of surprises is limited.

It is absurd to use the low-bid process to select a consultant, because there is no plan to bid on, simply a concept. The details are worked out in negotiations, and the owner can still go the next firm if a mutually fair price cannot be negotiated.

Conversely, quality plans are the foundation of the low-bid system for selecting contractors.

WTBA asks that the restriction of this requirement to local projects with state funds in part be changed. In the case of Transportation, General Transportation Aids (GTA) is the largest single SEG appropriation in the Transportation Budget, over \$400 million annually. When these funds leave the Transportation Fund, they are deposited in the local government's general fund, and become impossible to trace to any single expenditure. In effect, the bill as drafted would ignore the reality that *de facto* nearly all local transportation projects have GTA as a partial funding source.

We also object to the broad exemption provided to certain county highway contracts. In this case, in addition to GTA, a long list of county highway projects are funded with state LRIP-funds. This is an area where qualification-based procurement should unquestionably be used, to assure that these county projects are designed to the appropriate standards that will assure taxpayer value.

We also suggest that the section permitting a local unit of government to automatically solicit a proposal from a consultant on a project if the vicinity of the work for which the contract for professional services is located be deleted. Each project is unique: vicinity is undefined and in any case irrelevant. The only valid criteria should be qualifications-based selection, specific to the unique task at hand.

However, WTBA is strongly opposed to various sections of the draft that have unacceptable unintended consequences and ask that they be changed.

The core problem we see is that this approach undermines for no good reason the entire low bid statute, by blurring the line between what consultants and contractors do.

The low-bid statute (59.52 (29)) is clearly outlining the process for awarding construction contracts: "any contract for the construction, repair, remodeling, or improvement of any public work, building" ...and so forth.

Consultant and other professional services do not perform any of these construction tasks. What this bill should be doing is putting into the statutes a mandatory qualifications-based selection process for selecting firms to perform professional services, such as the design and construction oversight for construction projects as well as other important tasks that are in no way construction. Amending 59.52 (29) is a counterproductive approach to this important task, by needlessly blurring the distinction between contractor and consultant.

Currently, local governments do often use some form of qualifications-based procurement for consulting services, despite section 59.52 (29), precisely because it is appropriately silent on the procurement of these professional services. So, why is the exemption needed at all?